

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DIANA VARA, AMANDA WILSON, and)	
NOEMY SANTIAGO)	
<i>on behalf of themselves and all others similarly</i>)	
<i>situated,</i>)	
Plaintiffs,)	
v.)	Civil Action No. 19-12175-LTS
)	
ELISABETH DEVOS, <i>in her official capacity</i>)	
<i>as Secretary of the United States Department of</i>)	
<i>Education,</i>)	
)	
AND)	
)	
THE UNITED STATES DEPARTMENT)	
OF EDUCATION,)	
Defendants.)	

COMMONWEALTH OF MASSACHUSETTS)	
)	
Plaintiffs,)	
v.)	Civil Action No. 19-12177-LTS
)	
UNITED STATES DEPARTMENT OF)	
EDUCATION and ELISABETH DEVOS, <i>in</i>)	
<i>Her official capacity as Secretary of Education,</i>)	
)	
Defendants.)	

JOINT STATUS REPORT

On January 7, 2020, the Court ordered the parties in the above-captioned cases to “confer and file a status report” by January 15 “regarding whether counsel would like to do 1-step or 2-step” briefing in this case. ECF No. 20 (Civil No. 19-12175-LTS (“Vara”)), Dkt. No. 11 (Civil No. 19-12177-LTS (“Commonwealth”)).

On January 8, 2020, the Court entered a briefing schedule in the Vara case, setting deadlines for the filing of a joint record of stipulated facts, opposition and reply to Plaintiffs’ class certification motion, and a schedule for cross motions “for judgment on the merits of this dispute.”

ECF No. 22. The Court maintained its prior order that the parties file a joint status report by January 15, and directed the parties to address, in that report, whether the Commonwealth case “should proceed along the same briefing schedule provided for in this Order.” *Id.* The Court further directed that if either party (to the Vara case) “objects to this Order or proposes a different schedule or means of proceeding, they shall raise these issues in the Joint Status Report or in a separate motion filed by no later than January 15, 2020.” *Id.*

On January 13, 2020, Plaintiffs in the Vara case filed an amended complaint. ECF No. 24.

On January 14, 2020, the Court direct plaintiffs in the Vara case to “explain, briefly, in the status report the material changes made in the Amended Complaint,” ECF No. 25.

The parties have met and conferred, and report as follows:

Vara Plaintiffs Regarding ECF No. 25

Plaintiffs have attached, as Exhibit A, a blackline comparison of the initial and Amended Complaint. The amendment accomplishes two material changes.

First, it adds to the allegations regarding Plaintiffs Vara and Wilson, to reflect (as counsel has confirmed since last being before the Court) that both currently show zero balance owed on their federal student loans related to their attendance at Everest, MA, and that neither individual has received a written decision on the merits of her borrower defense application(s) or an explanation for the change in loan balance. *See* ECF No. 24 at 17, ¶ 93 (Vara); at 20, ¶ 110 (Wilson).

Second, the amendment adds an additional Named Plaintiff, Noemy Santiago, *see* ECF No. 24 at 3, ¶ 13; at 14-15, ¶¶ 67-80. In short, as alleged, Ms. Santiago borrowed federal student loans to attend Everest Massachusetts, has an outstanding balance on those loans, was specifically named in the AGO’s submission, and has not otherwise submitted a borrower defense application. Additional paragraphs have been amended to identify Ms. Santiago as a plaintiff and additional

class representative along with Plaintiffs Vara and Wilson, *see* ECF No. 24 at 3, ¶ 11; at 20, ¶ 111; at 21, ¶ 120; at 22, ¶ 121(c).

Vara Parties Regarding ECF No. 22

The parties conferred and respectfully request that the Court modify its briefing schedule as follows:

- (1) The Plaintiffs shall file any further amendment to their amended Complaint, ECF No. 24, for the sole purpose of adding additional plaintiffs, as well as a supplement to their motion for class certification, ECF No. 11, briefly explaining the suitability of additional plaintiff(s) to serve as representatives of the proposed class, no later than 4:30 PM on **January 17, 2020**.
- (2) The parties (including parties to the Commonwealth case) shall jointly file a record of stipulated facts by no later than **January 22, 2020**. If agreement cannot be reached as to certain facts, the parties shall include, in addition to stipulated facts, those facts that have not been agreed upon. In the case that disputed facts remain, the parties shall file motions to strike by no later than **January 29, 2020**.
- (3) Defendants shall respond to the operative complaint no later than **January 28, 2020**, so long as the Second Amended Complaint is filed, or a final version of the Second Amended Complaint is provided to defense counsel so they can confer with their client and obtain necessary information before the Martin Luther King Day holiday weekend, by 11:59 PM on January 16, 2020.
- (4) Plaintiffs shall file a motion for judgment on the merits of this dispute, and Defendants shall file their opposition to Plaintiffs' motion for class certification, by no later than **January 29, 2020**.

(5) Plaintiffs shall file a reply to Defendants' opposition to class certification no later than **February 5, 2020**. The Plaintiffs agree to forego hearing on this motion should the Court deem oral argument unnecessary.

(6) Defendants shall file an opposition no later than **February 28, 2020**.

(7) Plaintiffs shall file a reply by no later than **March 10, 2020**.

The parties do not anticipate seeking any extensions of or modifications to the above schedule. Defendants do not intend to file a cross motion for judgment on the merits of the dispute. Defendants do not anticipate seeking leave to file a sur-reply.

Commonwealth Parties Regarding ECF No. 11 (Commonwealth), ECF Nos. 20, 22 (Vara)

After conferring, the parties jointly propose the following briefing schedule:

- (1) The parties (including parties to the Vara case) shall jointly file a record of stipulated facts by no later than **January 22, 2020**. If agreement cannot be reached as to certain facts, the parties shall include, in addition to stipulated facts, those facts that have not been agreed upon. In the case that disputed facts remain, the parties shall file motions to strike by no later than **January 29, 2020**. Depending on the arguments that Defendants may choose to include in their anticipated motion to dismiss, the Commonwealth may find it necessary to provide additional facts in support of its opposition to Defendants' motion not previously included in the record of stipulated facts. The Commonwealth will file any such facts along with its opposition brief on or before February 24, 2020.
- (2) Defendants shall file their motion to dismiss the Complaint no later than **January 27, 2020**.
- (3) Plaintiff shall file an opposition to the motion to dismiss, and a motion for judgment on the merits of the dispute, no later than **February 24, 2020**.

(4) Defendants shall file a reply to Plaintiff's opposition to the motion to dismiss, if necessary, and an opposition to Plaintiff's motion for judgment or a motion to affirm no later than **March 25, 2020**.

(5) Plaintiff shall file a reply no later than **April 15, 2020**.

The foregoing proposal reflects the Defendants' preferences, and accommodates the Plaintiff's expectation that Defendants intend to file a motion to dismiss that will raise issues not previously decided by this Court in *Williams v. DeVos*, No. CV 16-11949-LTS and the necessity for Plaintiff, as a Government agency, to obtain necessary approvals for filings. The parties do not anticipate seeking any extensions of or modifications to the above schedule. Neither party anticipates seeking leave to file a sur-reply.

Dated: January 15, 2020

Respectfully submitted,

United States Department of Education and
Elisabeth De Vos

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon counsel for all parties of record through the ECF system on January 15, 2020.

/s/ Yael Shavit

Yael Shavit